

1 BRIAN BOYLE (S.B. #126576)
bboyle@omm.com
2 O'MELVENY & MYERS LLP
1625 Eye Street, NW
3 Washington, D.C. 20006-4001
Telephone: (202) 383-5300
4 Facsimile: (202) 383-5414

5 CATALINA J. VERGARA (S.B. #223775)
cvergara@omm.com
6 CHRISTOPHER CRAIG (S.B. #257108)
christophercraig@omm.com
7 BRITTNEY LANE (S.B. #288424)
blane@omm.com
8 O'MELVENY & MYERS LLP
400 South Hope Street
9 Los Angeles, CA 90071-2899
Telephone: (213) 430-6000
10 Facsimile: (213) 430-6407

11 Attorneys for Defendants AEGON USA LLC,
12 Transamerica Financial Life Insurance
13 Company, Transamerica Retirement Solutions
Corporation, Kirk Buese, Ralph Arnold, Ken
Klinger, Mary Taiber, and Diane Meiners

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

18 LEQUITA DENNARD, on behalf of
herself and all others similarly situated,

Plaintiff.

V.

21 AEGON USA LLC, TRANSAMERICA
22 FINANCIAL LIFE INSURANCE
23 COMPANY, TRANSAMERICA
24 RETIREMENT SOLUTIONS
25 CORPORATION, KIRK BUESE,
RALPH ARNOLD, KEN KLINGER,
MARY TAIBER, DIANE MEINERS,
and DOES 1 through 10, inclusive.

Defendants.

Case No. 2:15-cv-00896-CBM (Ex)

**DEFENDANTS' NOTICE OF
MOTION AND UNOPPOSED
MOTION TO TRANSFER
VENUE TO THE NORTHERN
DISTRICT OF IOWA
PURSUANT TO 28 U.S.C.
§ 1404(A); MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Judge: Hon. Consuelo B. Marshall
Magistrate: Hon. Charles F. Eick

Courtroom: 2
Date: April 14, 2015
Time: 10:00 a.m.

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on April 14, 2015, at 10:00 a.m., or as soon
 3 thereafter as the matter may be heard by the above-entitled court, located at 312
 4 North Spring Street, Los Angeles, California 90012 in Courtroom 2, defendants
 5 AEGON USA LLC, Transamerica Financial Life Insurance Company, and
 6 Transamerica Retirement Solutions Corporation, Kirk Buese, Ralph Arnold, Ken
 7 Klinger, Mary Taiber, and Diane Meiners (collectively, “Defendants”) will and
 8 hereby do move the Court for an order transferring the above-entitled civil action to
 9 the Cedar Rapids Division of the United States District Court for the Northern
 10 District of Iowa.

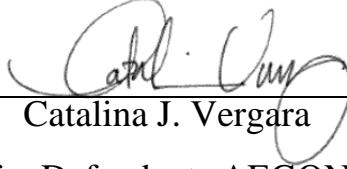
11 This motion is made under 28 U.S.C. § 1404(a), pursuant to which “a district
 12 court may transfer any civil action . . . to any district or division to which the parties
 13 have consented.” Here, the documents governing the AEGON Companies Profit
 14 Sharing Plan in which plaintiff Lequita Dennard was a participant expressly state
 15 that “[a]nyone (including but not limited to a participant or beneficiary) who files a
 16 lawsuit in connection with the Plan must file that lawsuit only in Federal District
 17 Court in Cedar Rapids, Iowa.” Further, the parties have met and conferred since the
 18 filing of this action, and Plaintiff Dennard has represented that she does not oppose
 19 Defendant’s motion to transfer. Federal law and controlling Supreme Court
 20 precedent thus compel transfer to the Cedar Rapids Division of the United States
 21 District Court for the Northern District of Iowa.

22 This motion is based on this Notice of Motion and Motion; the
 23 accompanying Memorandum of Points and Authorities; the concurrently-filed
 24 Declaration of Catalina J. Vergara and exhibits in support thereof; all exhibits, files,
 25 and records on file in this action; and such additional submissions and argument as
 26 may be presented at or before the hearing on this motion. This motion is made
 27
 28

1 following the conference of counsel pursuant to Central District of California Local
2 Rule 7-3, which took place on March 9, 10, and 17, 2015.

3 Dated: March 17, 2015

4 CATALINA J. VERGARA
O'MELVENY & MYERS LLP

5 By: 

6 Catalina J. Vergara

7
8 Attorneys for Defendants AEGON USA
9 LLC, Transamerica Financial Life
10 Insurance Company, Transamerica
11 Retirement Solutions Corporation, Kirk
12 Buese, Ralph Arnold, Ken Klinger,
13 Mary Taiber, and Diane Meiners

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

3 In this action, plaintiff Lequita Dennard (“Plaintiff”), a former participant in
4 the AEGON Companies Profit Sharing Plan (the “Plan”), alleges that defendants
5 AEGON USA LLC, Transamerica Financial Life Insurance Company, and
6 Transamerica Retirement Solutions Corporation (collectively, “Defendants”)
7 breached their duties under the Employee Retirement Income Security Act
8 (“ERISA”), 29 U.S.C. § 1001, *et seq.*, by charging participants allegedly excessive
9 fees. Defendants now move to transfer the matter to the Cedar Rapids Division of
10 the United States District Court for the Northern District of Iowa, pursuant to the
11 forum selection clause in the Plan documents, which provides:

12 Anyone (including but not limited to a participant or beneficiary) who
13 files a lawsuit in connection with the Plan must file that lawsuit only
14 in Federal District Court in Cedar Rapids, Iowa.

15 (See Transamerica 401(k) Retirement Savings Plan Summary Plan Description at
16 28, attached as Exhibit A to the Declaration of Catalina J. Vergara (“Vergara
17 Declaration”) concurrently filed herewith.)

18 Plaintiff does not oppose Defendants' motion. (See Vergara Decl., ¶ 3.)
19 Transfer of the action is thus required under controlling Supreme Court precedent,
20 as there are no "extraordinary circumstances" that would justify upsetting the
21 parties' "legitimate expectation" that their disputes would be adjudicated in Iowa.
22 *See Atl. Marine Constr. Co. v. U.S. Dist. Ct. West. Dist. Tex.*, __ U.S. __, 134 S. Ct.
23 568, 581 (2013). For these reasons, explained further below, Defendants
24 respectfully request that the Court transfer this action to the Cedar Rapids Division
25 of the United States District Court for the Northern District of Iowa.

1 **II. LEGAL STANDARD.**

2 Motions to transfer are governed by 28 U.S.C. § 1404(a), which states, “For
 3 the convenience of the parties and witnesses, in the interest of justice, a district
 4 court may transfer any civil action to any other district or division where it might
 5 have been brought or to any district or division to which the parties have
 6 consented.” When there is no forum selection clause, courts apply a multi-factor
 7 test that balances the “private” and “public” interest factors to determine whether
 8 transfer is appropriate. *See, e.g., Decker Coal Co. v. Commonwealth Edison Co.*,
 9 805 F.2d 834, 843 (9th Cir. 1986); *Saleh v. Titan Corp.*, 361 F. Supp. 2d 1152,
 10 1155–56 (S.D. Cal. 2005).

11 “*The calculus changes, however, when [as here] the parties’ contract contains*
 12 *a valid forum-selection clause, which represents the parties’ agreement as to the*
 13 *most proper forum.*” *Atl. Marine*, 134 S. Ct. at 581 (internal quotations and
 14 citations omitted). Under the adjusted calculus, “plaintiff’s choice of forum merits
 15 no weight,” and “the practical result is that forum selection clauses should control
 16 except in unusual cases” where public-interest factors dictate otherwise. *Id.* at 581–
 17 82. *See also Monastiero v. appMobi, Inc.*, No. C13-05711, 2014 WL 1991564, at
 18 *3 (N.D. Cal. May 15, 2014) (“courts may accord no weight to the plaintiff’s
 19 chosen forum”); *E. Bay Women’s Health, Inc. v. gloStream, Inc.*, No. C14-00712,
 20 2014 WL 1618382, at *2 (N.D. Cal. Apr. 21, 2014) (“[A] district court should give
 21 no weight to the plaintiff’s choice of forum and should not consider the parties’
 22 private interest factors”) (quotation omitted); *Minard v. Green Van Lines, Inc.*, No.
 23 2:13-cv-01711, 2014 WL 793988, at *2 (E.D. Cal. Feb. 26, 2014) (“the court must
 24 disregard plaintiff’s choice of forum and the parties’ private interests”).

25 **III. THE COURT MUST TRANSFER THIS CASE TO THE**
 26 **NORTHERN DISTRICT OF IOWA.**

27 Under *Atlantic Marine*, the pre-dispute forum selection clause in the Plan
 28 document is “controlling.” *Atl. Marine*, 134 S. Ct. at 581. As the Supreme Court

1 explained in that case, “[w]hen the parties have agreed to a valid forum-selection
 2 clause, a district court should ordinarily transfer the case to the forum specified in
 3 the clause.” *Id.* Indeed, “[o]nly under extraordinary circumstances unrelated to the
 4 convenience of the parties should a § 1404(a) motion be denied.” *Id.*

5 Applying this same analysis here leads to only one conclusion: that this case
 6 must be transferred to Iowa. First, there is an unambiguous forum selection clause
 7 in the Plan documents that states that anyone who brings suit “in connection with
 8 the Plan” must do so in the Cedar Rapids Division of the United States District
 9 Court for the Northern District of Iowa.¹ Second, there are no “extraordinary
 10 circumstances” that warrant deviating from the chosen forum. Defendants thus
 11 respectfully request that the Court grant their motion to transfer Plaintiff’s action to
 12 the Cedar Rapids Division of the United States District Court for the Northern
 13 District of Iowa.

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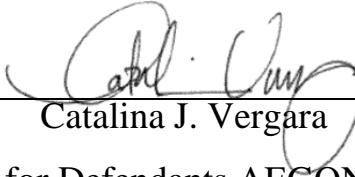
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¹ While a plan’s terms are generally under the control of the plan’s sponsor (as long as the sponsor does not extinguish vested rights), plan participants accept the terms of the plan by choosing to participate and defer income after having been afforded access to the plan’s summary plan description. *See Coomer v. Bethesda Hosp. Inc.*, 370 F.3d 499, 508 (6th Cir. 2004) (“Employers or other plan sponsors are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans. This rule applies equally to pension benefit plans.” (internal citations omitted)) (citing *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 78 (1995), and *Lockheed Corp. v. Spink*, 517 U.S. 882, 890 (1996)); *Mathews v. Sears Pension Plan*, 144 F.3d 461, 465 (7th Cir. 1998) (“The potential [plan] beneficiary, though not consulted or consenting, ordinarily is bound nevertheless by the [plan’s terms] . . . unless it violates a provision of ERISA, as by cutting down on his accrued rights under the plan (basically the value of his own monetary contributions.”)).

1 Dated: March 17, 2015
2

CATALINA J. VERGARA
O'MELVENY & MYERS LLP

3 By: 
4

Catalina J. Vergara

5 Attorneys for Defendants AEGON USA
6 LLC, Transamerica Financial Life
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